

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

FILED
U.S. DISTRICT COURT
2003 DEC 9 P 4:52

Vincent Gabriele (father) on behalf of:
Lucas Gabriele and Claire Gabriele (son and daughter)
Plaintiffs,

S.D. OF N.Y. W.P.
JUDGE CONNER
COMPLAINT

-against-

William B. Heebink, Ph.D., Superintendent of Schools

03 CIV. 9769

and

Clarkstown Central School District
Defendants.

I, Vincent Gabriele, as the father of Lucas Gabriele, son, age 11, and Claire Gabriele, daughter, age 9, residing at 549 South Main Street, New City, New York sue

William B. Heebink, Ph.D., Superintendent of Schools, residing at 8 Gable Road, New City, New York

and,

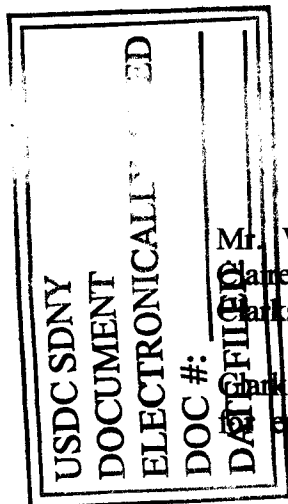
Clarkstown Central School District, 62 Old Middletown Road, New City, New York

For refusal to allow Lucas Gabriele and Claire Gabriele to attend Clarkstown Public Schools [Link Elementary School]. This refusal is due to the fact that Lucas and Claire have not been vaccinated. My refusal to allow vaccinations to be administered to Lucas and Claire is based upon my religious beliefs. My right of refusal is supported by New York State Public Health law, Section 2164, paragraph 9:

This section shall not apply to children whose parent, parents, or guardian hold genuine and sincere religious beliefs which are contrary to the practices herein required, and no certificate shall be required as a prerequisite to such children being admitted or received into school or attending school.

Mr. William Heebink has personally and capriciously decided to prevent Lucas and Claire from attending their elementary school (Link Elementary School), a part of Clarkstown Central School District.

Clarkstown Central School District, and any and all other agents thereof, are responsible for empowering Mr. William Heebink to deny Lucas and Claire from attending their



elementary school (Link Elementary School), a part of Clarkstown Central School District.

This Federal Court has jurisdiction in this case because my constitutional rights have been violated. The first amendment of the United States Constitution grants me the right of religious freedom. My freedom to worship and practice religion as I choose is jeopardized.

The fourteenth amendment guarantees equal application of the laws. New York State law allows exemptions from vaccines, in fact, this right is outlined within paragraph 9 of this law. There is a precedence that some citizens of the State of New York have enjoyed the religious freedom of vaccine exemptions that this law provides. Mr. William Heebink has maliciously and recklessly trampled this right and corresponding freedom.

I feel that the merits of this case will be lost in New York State courts. Since Clarkstown Central Schools are entities endorsed and certified by an agency of the State of New York (The Department of Education) and since Mr. William Heebink is an individual empowered by that agency within this State of New York. I trust, hope, and pray that this Federal Court has the objective clarity to uphold my individual rights guaranteed by the United States Constitution

I ask that the court order Mr. William Heebink to cease and desist his attacks upon my freedom to worship and practice religion as I choose. I further ask of the court that Mr. William Heebink be ordered to cease and desist his insistence that Lucas and Claire receive vaccines; an exemption that is lawfully permitted under New York State law.

I ask that the court order Clarkstown Central School District to allow my children, Lucas and Claire, free from vaccines, to rejoin their classmates at Link Elementary School and to then, in sequence, complete their educations at all subsequent schools of this public institution (Middle School and then High School).

signed, Vincent Gabriel
Plaintiff

Law Offices of

James R. Filenbaum

James Filenbaum *

* Member N.Y. and Fla. Bars

Darryl C. Borenkoff **

** Member N.Y. & Co. Bars

Peter K. Nardone

2 Executive Blvd.
Suite 201

Suffern, NY 10901

(914) 357-0020

Fax (914) 357-7826

September 26, 1994

Attention : School Director

RE: LUCAS GABRIELE
DATE OF BIRTH: JUNE 2, 1992

Dear Sir/Madam:

This office has been retained as counsel to represent Mr. Vincent Gabriele and Mrs. Susan Gabriele, individually, on behalf of their son, Lucas Gabriele, with regard to my clients' rights for an exemption from immunizations as required by Public Health Law Section 2164.

The present situation stems from my clients' refusal to have their son submit to immunizations and inoculations as prescribed by Section 2164 of the Public Health Law. My clients' have the right to refuse to have their son receive these injections pursuant to Public Health Law Section 2164 since they have sincere religious beliefs which prohibit them from having their son receive immunizations and inoculations.

Recent court decisions have upheld the rights of individuals seeking exemption from immunizations based upon "personal" religious beliefs. (*Sherr and Levy vs. Northport East-Northport Union Free School District*, 672 F. Supp. 81, (E.D.N.Y. 1987); *Allanson vs. Clinton Central School District*, U.S. District Court, Northern District Court, Northern District of New York (84 CV 174), 1984; *Campain vs. Marlboro Central School District*, Supreme Court Ulster County Special Term, November 15, 1985; *Brown vs. City School District*, 429 NYS2d 355; *Maier vs. Besser*, 73 Misc.2d 241).

My clients' religious beliefs are as follows:

"We believe there is a supreme universal force or spirit which can be found everywhere. This supreme universal force or spirit could be called "God", the guiding and supreme authority. The human body is a creation of this supreme authority and is therefore divine."

Page (2)
September 26, 1994

"We believe the body's immune system is also divine and must not be defiled by immunizations, which are a violation of the supreme authority, and therefore, "unholy". Since immunizations are "unholy" they violate our religious beliefs."

My clients' religious beliefs are also based upon the understanding of what God requires of them as provided for in the bible.

"For the life of flesh is in the blood and I have given it to you upon the altar to make an atonement for your souls; For it is the blood that maketh an atonement for the soul."

(Leviticus 17:11)

"I know and am persuaded by the Lord Jesus, that there is nothing unclean of itself; but to him that esteemeth anything to be unclean, to him it is unclean."

(Romans 14:14)

"And he that doubteth is damned if he eats, because he eateth not of faith for whatsoever is not faith is sin."

(Romans 23:23)

"Follow God your Lord, remain in awe of him, keep His commandments, obey and serve Him and you will then be able to cling to Him." "The Physical body is the form which houses the lofty soul and therefore must also remain holy and pure and God would keep the body healthy without defilement, you must be holy, since I am God your Lord, and I am holy."

(Leviticus 19:1)

I anticipate a prompt response from the appropriate official.

Very truly yours,

JAMES R. FILENBAUM

JRF/co

cc: Mr. and Mrs. Vincent Gabriele

Page (3)
September 26, 1994

THE ABOVE CONSTITUTES OUR REQUEST FOR AN EXEMPTION FROM
IMMUNIZATIONS BASED UPON OUR RELIGIOUS BELIEFS.


MR. VINCENT GABRIELE


MRS. SUSAN GABRIELE

Law Offices of

James R. Filenbaum

James Filenbaum *

* Member N.Y. and Fla. Bars

Darryl C. Borenkoff **

** Member N.Y. & Ca. Bars

Peter K. Nardone

2 Executive Blvd.

Suite 201

Suffern, NY 10901

(914) 357-0020

Fax (914) 357-7826

September 26, 1994

RE: CLAIRE GABRIELE
DATE OF BIRTH: MARCH 19, 1994

To Whom It May Concern:

This office has been retained as counsel to represent Mr. Vincent Gabriele and Mrs. Susan Gabriele, individually, on behalf of their daughter, Claire Gabriele, with regard to my clients' rights for an exemption from immunizations as required by Public Health Law Section 2164.

The present situation stems from my clients' refusal to have their daughter submit to immunizations and inoculations as prescribed by Section 2164 of the Public Health Law. My clients' have the right to refuse to have their daughter receive these injections pursuant to Public Health Law Section 2164 since they have sincere religious beliefs which prohibit them from having their daughter receive immunizations and inoculations.

Recent court decisions have upheld the rights of individuals seeking exemption from immunizations based upon "personal" religious beliefs. (*Sherr and Levy vs. Northport East-Northport Union Free School District*, 672 F. Supp. 81, (E.D.N.Y. 1987); *Allanson vs. Clinton Central School District*, U.S. District Court, Northern District Court, Northern District of New York (84 CV 174), 1984; *Campaign vs. Marlboro Central School District*, Supreme Court Ulster County Special Term, November 15, 1985; *Brown vs. City School District*, 429 NYS2d 355; *Maler vs. Besser*, 73 Misc.2d 241).

My clients' religious beliefs are as follows:

"We believe there is a supreme universal force or spirit which can be found everywhere. This supreme universal force or spirit could be called "God", the guiding and supreme authority. The human body is a creation of this supreme authority and is therefore divine."

Page (2)
September 26, 1994

"We believe the body's immune system is also divine and must not be defiled by immunizations, which are a violation of the supreme authority, and therefore, "unholy". Since immunizations are "unholy" they violate our religious beliefs."

My clients' religious beliefs are also based upon the understanding of what God requires of them as provided for in the bible.

"For the life of flesh is in the blood and I have given it to you upon the altar to make an atonement for your souls; For it is the blood that maketh an atonement for the soul."

(Leviticus 17:11)

"I know and am persuaded by the Lord Jesus, that there is nothing unclean of itself; but to him that esteemeth anything to be unclean, to him it is unclean."

(Romans 14:14)

"And he that doubteth is damned if he eats, because he eateth not of faith for whatsoever is not faith is sin."

(Romans 23:23)

"Follow God your Lord, remain in awe of him, keep His commandments, obey and serve Him and you will then be able to cling to Him." "The Physical body is the form which houses the lofty soul and therefore must also remain holy and pure and God would keep the body healthy without defilement, you must be holy, since I am God your Lord, and I am holy."

(Leviticus 19:1)

I anticipate a prompt response from the appropriate official.

Very truly yours,

JAMES R. FILENBAUM

JRF/co

cc: Mr. and Mrs. Vincent Gabriele

Page (3)
September 26, 1994

THE ABOVE CONSTITUTES OUR REQUEST FOR AN EXEMPTION FROM
IMMUNIZATIONS BASED UPON OUR RELIGIOUS BELIEFS.


MR. VINCENT GABRIELE


MRS. SUSAN GABRIELE